



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R10-OAR-2020-0361; FRL-5565-03-R10]

RIN 2012-AA02

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: On October 12, 2022, the Environmental Protection Agency (EPA) published a proposed rulemaking to revise the Federal Air Rules for Reservations (FARR), a collection of Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations in Idaho, Oregon, and Washington. In the preamble of that publication, the description of the proposed changes to one of the rules in the FARR, the general open burning rule, was inadvertently replaced with a duplicate of the description of the proposed changes to a different rule. We are publishing this document to supply the correct preamble description of the proposed changes to the general open burning rule to the public. We note that there are no corrections to the proposed amendments to the rule language.

DATES: Comments for the proposed rule that was published in the Federal Register on October 12, 2022 (87 FR 61870) must be received on or before January 10, 2023.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA-R10-OAR-2020-0361, using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information on submitting comments, please see our October 12, 2022, **Federal Register** publication at 87 FR 61870.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you need assistance.

FOR FURTHER INFORMATION CONTACT: Sandra Brozusky, Air and Radiation Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101-1128, (206) 553-5317, brozusky.sandra@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2022 (87 FR 61870), the EPA published a proposed rulemaking to revise the Federal Air Rules for Reservations (FARR), a collection of Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations in Idaho, Oregon, and Washington. In the preamble of that document on page 61878, column 2, where the EPA described the proposed changes to the regulatory requirements in the Code of Federal Regulations (CFR) at 40 CFR 49.131 General rule for open burning, the EPA inadvertently duplicated the text describing the proposed changes to a different rule. We are publishing this document to supply the correct preamble text to the public. We note that there are no corrections to the proposed amendments to the rule language in 40 CFR 49.131. For additional details on the proposed rulemaking, please see our October 12, 2022, **Federal Register** publication at 87 FR 61870.

Correction

In the proposed rule document FR Doc. 2022-20486 (87 FR 61870, October 12, 2022), on page 61878, in the second column, correct the document to replace the existing last paragraph with the following:

Section 49.131 General rule for open burning. This section limits the types of materials that can be openly burned within an Indian reservation to control emissions of particulate matter. The EPA is proposing to simplify the approach to the General rule for open burning from one that prohibits the open burning of a long list of materials to one that identifies the materials that can be openly burned. The proposed revisions prohibit open burning with exceptions for certain materials, during specific situations, and under certain conditions. The intent of this revision is to more clearly delineate the materials that may be burned, thereby simplifying the regulatory scheme for the public, the EPA, and delegated Tribes. The proposed revisions to 40 CFR 49.131 will better ensure that only those materials that do not significantly degrade air quality are allowed to be burned.

More specifically, with limited exceptions, the proposed revisions prohibit all open burning except the open burning of natural vegetation; untreated wood; paper products generated and burned on site at a single-family residence or residential building with four or fewer dwelling units; and paper and manufactured fire starters used to start a fire. With this proposed revision, certain definitions, such as “garbage,” are no longer used and are being eliminated. The EPA is proposing to define “untreated wood” as wood of any species that has not been chemically impregnated, painted, coated, or similarly modified to prevent weathering and deterioration.

The EPA is also proposing to expand the scope of the regulated entities under this rulemaking to include the lessee of the property on which open burning is conducted to ensure parties that may be responsible for burning decisions on a given property are responsible for complying with the requirements of this section. As under the existing rule, all but specified

exempt open burning continues to be prohibited when a burn ban, air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency is declared due to deteriorating air quality. The EPA is however, proposing to add language clarifying that, in addition to extinguishing a fire and withholding additional material from a fire when such an event is declared, a person must also discontinue lighting a fire (e.g., cease using a drip torch to light the edge of an agricultural field).

The current exemptions from the prohibition on open burning remain, with some revisions. Open fires continue to be exempt in all respects if set for cultural or traditional purposes, including fires within structures such as sweat houses or sweat lodges. The proposed revisions clarify that fires set for cultural or traditional purposes in smoke houses are covered by this exclusion. Open burning for the disposal of diseased animals or other material by order of a public health official continues to be exempt except during burn bans and specified periods of deteriorating air quality, as under the current rule. In addition, we retain exceptions for outdoor fires used for the training of firefighters and the disposal of fireworks by Tribal governments. Both firefighting training fires and fireworks disposal fires continue to require prior written permission from the Regional Administrator to allow for the burning of materials not otherwise authorized under the open burning rule. The EPA is proposing to add language to the provisions for fire fighter training fires to ensure that EPA's requirements for removal of asbestos containing materials are met prior to burning a structure and also to revise the deadline for requesting permission to be the same 10 days as the notification requirement in the asbestos rule (see 40 CFR part 61, subpart M).

In addition, if the large open burning permit rule applies on the Indian reservation where the burn is occurring and the burn meets the definition of "large open burn," outdoor fires used for the training of firefighters and outdoor fires used for the disposal of fireworks by Tribal governments also require a large open burning permit under 40 CFR 49.132 Rule for large open burning permits to ensure air quality concerns are taken into account in deciding when to allow

such burns. In the unlikely event such burns do not meet the definition of a “large open burn,” a small open burn permit would not be required for such burns. As revised, the General rule for open burning clarifies that requests for permission for fires for the disposal of fireworks is limited to Tribes, but no longer limits such fires to a single outdoor fire per year. The proposed revisions also provide increased specificity of the approval process for such burns.

An exemption for “cooking fires” has been added, along with a definition of that term, to distinguish such fires from “recreational fires,” which term is now also defined. A cooking fire is an open burn in a fire pit or outdoor appliance for the purpose of cooking food and may burn firewood, charcoal briquettes, wood pellets, or other fuels suitable for cooking food. This list of permissible fuels for cooking fires is broader than under the General rule for open burning. Because cooking fires are exempt from the rule, cooking fires are not subject to the prohibition that applies to recreational fires during burn bans. The proposed revisions define recreational fires as campfires and bonfires burning materials authorized under the General rule for open burning for pleasure or celebratory purposes but excludes cooking fires and fires used for debris disposal purposes. Although recreational fires are no longer included in the list of exemptions, there is no substantive difference in how they are addressed under the proposed revisions. As under the current rule, the materials that may be burned in a recreational fire have not changed and recreational fires remain prohibited when burn bans are in effect. Recreational fires remain exempt from the more specific requirements in paragraph (e)(1) of this section that apply to open burns, such as the provisions regarding smoldering.

The EPA has also added a proposed exemption for fires set as part of a firefighting strategy (e.g., back burn, fire break, or safety perimeter burn), but only if approved by the appropriate fire safety jurisdiction and under an emergency or incident command situation. Such fires may reduce the duration or size of uncontrolled fires and therefore may have a positive impact on levels of particulate matter overall.

The EPA is also proposing revisions to the provisions of this rulemaking that specify the

requirements for conducting open burning. The proposed revisions clarify that a burn ban declared by the Regional Administrator remains in effect until the Regional Administrator makes a new determination and terminates the burn ban, as well as to describe the methods the EPA uses to announce a burn ban and its termination. The EPA is also adding language to clarify that a burn ban can be declared for specific geographic areas within an Indian reservation. We are also clarifying that burn bans are based on the 24-hour PM NAAQS and that the time period for projections of air quality levels is a maximum of 72 hours. These clarifications are consistent with the intent of the rule and how it has been implemented in practice.

The EPA has heard concerns that the criterion for triggering burn bans, specifically 75% of any 24-hour PM NAAQS, could be overly conservative and impede the increased use of prescribed fire to help reduce the risk of wildfire within the Indian reservations covered by the FARR by reducing the number of available burn days. As mentioned previously, the EPA is currently reviewing the PM NAAQS and there are additional concerns that if that review results in a lower level of the 24-hour PM NAAQS, the number of available burn days could be further reduced.

The purpose of a burn ban is to protect human health and air quality by preventing emissions from open burning from pushing PM concentrations above the level of the NAAQS, so it is important to call a burn ban before concentrations reach the level of the NAAQS. The EPA acknowledges that there are a number of other criteria for declaring burn bans that could also accomplish this objective. The EPA is therefore soliciting comment on changing the criteria to whether PM concentrations exceed or are projected to exceed the NAAQS anytime during the next 72 hours. Because the meteorological forecasting tools and availability of real-time air monitoring data have improved significantly since 2005 when the FARR was promulgated, relying on projections of the PM NAAQS, rather than a percentage below the PM NAAQS, for calling burn bans may also provide reasonable assurance that emissions from open burning will not cause or contribute to an exceedance of the PM NAAQS. This revision would potentially

reduce the number of burn bans and thus increase the available days during which prescribed burning could be conducted.

The EPA is also proposing revisions to account for the fact that, in certain defined instances (e.g., multi-day fires) and with the appropriate permits, a fire is allowed to smolder when it would have less impact on air quality than putting the fire out and relighting it. The revisions would also explicitly require that a person 18 years of age or older must be in attendance of the fire at all times; that there be means available for extinguishing the fire, such as water or chemical fire suppressant; and that a fire be extinguished if safe to do so, at the request of the EPA based on a determination that the open burning is causing or has the potential to cause or contribute to an exceedance of a national ambient air quality standard. When relevant, the EPA will also request that a fire be extinguished if safe to do so, based on a determination that the open burning is causing any other adverse impact on air quality. These simple precautions help ensure that fires are responsibly managed, considering changing adverse meteorological conditions, other scheduled burning activities in the surrounding area and other factors that could impact a burn. For burns that could significantly impair visibility on roadways, coordination with traffic safety authorities must take place before igniting a burn in order to provide an opportunity for such authorities to require appropriate transportation safety measures. “Small open burns”, as defined in 40 CFR 49.123, are exempt from this requirement. Because of the limited size of small open burns, the amount of material consumed would not be expected to cause a plume large enough and dense enough to impair visibility on roadways.

Finally, the EPA is clarifying that nothing in the open burning rule exempts or excuses any person from complying with applicable laws and ordinances of Tribal governments. This was already encompassed in the language in the existing rule stating that nothing in the open burning rule “exempts or excuses any person from complying with applicable laws and ordinances of...other governmental jurisdictions.” The proposed revision is being made for

clarity here, as well as in the following burn permit sections.⁴

Dated: November 17, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

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⁴ The EPA also notes that nothing in the FARR or the proposed revisions restricts the exclusion of air quality monitoring data influenced by exceptional events as provided in 40 CFR 50.14.